

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

Patricia Kurth,	:	
	:	Civil Action No.: 6:14-cv-00023
Plaintiff,	:	
	:	
v.	:	
	:	
CBE Group, Inc.,	:	COMPLAINT
	:	JURY TRIAL DEMANDED
Defendant.	:	
	:	

For this Complaint, the Plaintiff, Patricia Kurth, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), violations of the Telephone

Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the invasions of Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to collect a consumer debt.

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1337.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that

Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

4. The Plaintiff, Patricia Kurth ("Plaintiff"), is an adult individual residing in Gatesville, Texas, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3), and is a "person" as defined by 47 U.S.C. § 153(10).

5. The Defendant, CBE Group, Inc. (“CBE”), is an Iowa business entity with an address of 1309 Technology Parkway, Cedar Falls, Iowa 50613, operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6), and is a “person” as defined by 47 U.S.C. § 153(10).

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

6. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to Verizon Wireless (the “Creditor”).

7. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

8. The Debt was purchased, assigned or transferred to CBE for collection, or CBE was employed by the Creditor to collect the Debt.

9. The Defendant attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

B. The Facts

10. Within the last year, beginning in or around September 2013, CBE contacted Plaintiff in an attempt to collect the Debt.

11. During their initial communication, Plaintiff and CBE agreed to a payment plan. Plaintiff agreed to send payments to CBE each month.

12. Thereafter, and despite their agreement and Plaintiff’s compliance with monthly payments, CBE began placing calls to Plaintiff on her cellular telephone, number 254-xxx-9132, using an automated telephone dialer system (“ATDS”) and/or by using an artificial or prerecorded voice.

13. When Plaintiff answered ATDS calls from CBE, a prerecorded message would begin to play stating that Plaintiff needed to contact CBE regarding the Debt.

14. In early October 2013, Plaintiff called CBE to inquire about why she was now receiving automated calls. During the conversation, Plaintiff requested that all such calls to her cellular telephone cease.

15. In response, CBE stated that unless Plaintiff gave them authorization to make direct withdrawals from her bank account instead of the manual payments Plaintiff had been making, the ATDS calls would continue.

16. Thereafter, Plaintiff made several more requests that the automated calls to her cell phone cease.

17. Regardless, CBE placed an additional 35 to 40 subsequent calls to Plaintiff's cellular telephone after her initial request that all such calls cease.

18. Upon information and belief, Plaintiff never provided her cellular telephone number to CBE and did not provide CBE with prior express consent to place ATDS calls to her cellular phone.

19. Despite Plaintiff's request to cease the calls, CBE continued to harass Plaintiff with automated calls to her cellular phone at a rate of two calls on a daily basis through to and including November 2013.

COUNT I

VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692, et seq.

20. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

21. The Defendant's conduct violated 15 U.S.C. § 1692d in that Defendant engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

22. The Defendant's conduct violated 15 U.S.C. § 1692d(5) in that Defendant caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass.

23. The Defendant's conduct violated 15 U.S.C. § 1692f in that Defendant used unfair and unconscionable means to collect a debt.

24. The foregoing acts and omissions of the Defendant constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

25. The Plaintiff is entitled to damages as a result of Defendant's violations.

COUNT II

VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT
TEX. FIN. CODE ANN. § 392, et al.

26. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

27. The Plaintiff is a "consumer" as defined by Tex. Fin. Code Ann. § 392.001(1).

28. The Defendant is a "debt collector" and a "third party debt collector" as defined by Tex. Fin. Code Ann. § 392.001(6) and (7).

29. The Defendant caused a telephone to ring repeatedly, with the intent to annoy or abuse the Plaintiff, in violation of Tex. Fin. Code Ann. § 392.302(4).

30. The Plaintiff is entitled to injunctive relief and actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(1) and (2) and to remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a).

COUNT III

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

31. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

32. At all times mentioned herein and within the last four years, CBE called Plaintiff on her cellular telephone using an ATDS and/or by using a prerecorded or artificial voice.

33. Plaintiff did not provide her consent to CBE to be contacted on her cellular telephone and in fact repeatedly instructed CBE to stop all calls to her and cease calling her cellular telephone.

34. Regardless, Defendant continued to place automated calls to Plaintiff's cellular telephone using a prerecorded voice knowing that it lacked consent to call her number. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

35. The telephone number called by CBE was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

36. The calls from CBE to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

37. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

38. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT IV

INVASION OF PRIVACY BY INTRUSION INTO PRIVATE AFFAIRS

39. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. The Restatement of Torts, Second, § 652(b) defines intrusion upon seclusion as, “One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”

41. Texas further recognizes the Plaintiff’s right to be free from invasions of privacy, thus the Defendant violated Texas state law.

42. The Defendant intentionally intruded upon the Plaintiff’s right to privacy by continually harassing the Plaintiff with automated calls to her cellular telephone.

43. The telephone calls made by the Defendant to the Plaintiff were so persistent and repeated with such frequency as to be considered, “hounding the plaintiff,” and, “a substantial burden to her existence,” thus satisfying the Restatement of Torts, Second, § 652(b) requirement for an invasion of privacy.

44. The conduct of the Defendant in engaging in the illegal collection activities resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

45. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendant.

46. All acts of the Defendant and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendant is subject to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant:

1. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against the Defendant;
2. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendant;
3. Injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
4. Actual damages pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
5. Remedies under Tex. Bus. & Comm. Code § 17.62 pursuant to Tex. Fin. Code Ann. § 392.404(a);
6. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
7. Actual damages from the Defendant for intentional, reckless, and/or negligent invasions of privacy in an amount to be determined at trial for the Plaintiff;
8. Punitive damages; and
9. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: January 29, 2014

Respectfully submitted,

By: /s/ Sergei Lemberg

Sergei Lemberg, Attorney-in-Charge
Connecticut Bar No. 425027

LEMBERG LAW L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
E-mail: slemburg@lembertglaw.com
Attorneys for Plaintiff